

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VALDA J. KNIGHT,	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 97-5959
v.	:	
	:	
PENNSYLVANIA STATE POLICE	:	
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT and MEKEL PETTUS	:	
individually and in his	:	
official capacity as a liquor	:	
control enforcement officer	:	
of the Pennsylvania State	:	
Police Bureau of Liquor Control	:	
Enforcement.	:	
Defendants.	:	

M E M O R A N D U M

BUCKWALTER, J.

August 20, 1998

Plaintiff, Valda Knight ("Knight"), claims to have been subjected to sexual harassment while an employee of Defendant, the Pennsylvania State Police, Bureau of Liquor Control Enforcement, (the "Bureau") in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.¹ The Bureau now seeks judgment in its favor pursuant to Federal Rule of Civil Procedure 56. For the reasons that follow, this request will be granted.

1. Pursuant to the Bureau's motion for 12(b)(6) dismissal on February 20, 1998 this court dismissed Knight's additional statutory claims based on the Pennsylvania Human Relations Act; the Pennsylvania Constitution; 42 U.S.C. §§ 1981, 1983, 1985(3) and 1988 and common law claims of Assault and Battery; Intentional Infliction of Emotional Distress; Civil Conspiracy and Negligence.

On September 23, 1995, while working as a Liquor Enforcement Officer, Knight was assigned to "coach" a more junior officer, Defendant, Mekel Pettus ("Pettus"). On several occasions Pettus made sexually suggestive and offensive comments and gestures to Knight. For example, Pettus grabbed Knight's hand, placed it on his holstered gun saying "feel the hard steel, doesn't it feel good" and suggested that Knight "dance for money." Knight reported this behavior to her supervisors, on October 13, 1995 Pettus was reassigned to a male coach and an investigation ensued. Prior to completion of the investigation complaints from other female officers combined with Pettus' inadequate job performance led to his termination on November 16, 1995. After a full investigation of Knight's complaint, she was informed that Pettus' behavior towards her would have been adequate basis for dismissal had he not already been fired. Knight was thanked for her courage and patience and it was noted that her conduct "reflected positively upon [herself] and the image of the Pennsylvania State Police and the Bureau of Liquor Control Enforcement."

The Bureau does not challenge the inappropriateness of Pettus' conduct towards Knight, instead it argues, inter alia, that Knight's failure to follow administrative procedures prior to bringing suit deprives this court of jurisdiction to hear her claim.

Title VII requires a complainant to file a timely discrimination charge with the EEOC as a prerequisite to a federal lawsuit. EEOC v. Commercial Office Prods., 486 U.S. 108, 110 (1988); see Woodson v. Scott Paper Co., 109 F.3d 913, 926 (3d Cir. 1997)(federal courts lack jurisdiction to hear Title VII claim where plaintiff has failed to file charge with the EEOC). In the instant case it is clear that no such charge was filed.

The Bureau subpoenaed the EEOC for all documents relating to Knight and received a copy of a complaint filed by Knight on March 10, 1997 (Charge No.17F93110, Knight v. PA State Police). Although, courts liberally construe claims contained in an EEOC charge for purposes of determining whether or not administrative remedies have been exhausted, Doe v. Kohn Nast & Graf, P.C., 866 F.Supp. 190, 196 (E.D.Pa. 1994)(judicial complaint not limited to scope of four corners of the EEOC charge) (citations omitted), it is obvious that Knight's March 10, 1997 charge is wholly unrelated to her present claims of sexual harassment and therefore does not satisfy the exhaustion requirement. The 1997 charge contains allegations of racial discrimination, that white officers are routinely given more leeway in choosing assignments and retaliation, that Knight received a poor performance review in retaliation for reporting Pettus' behavior to her supervisor. The charge does not, however, contain any description of Pettus' behavior or

allegations regarding sexual harassment. Furthermore, March 3, 1997 is given as the earliest date on which the allegedly racially discriminatory and retaliatory behavior occurred, almost four months after Pettus' termination. Thus, I conclude that Knight's March 10, 1997 EEOC charge does not satisfy the exhaustion requirement for her present claims of sexual harassment.

In response to the Bureau's motion, Knight submits a copy of a charge filed with the Pennsylvania Human Relations Commission ("PHRC"). The charge is dated July 6, 1995 and contains allegations of sexual harassment by Pettus. Knight draws the court's attention to question 6 where the line next to the phrase "[t]his charge will be referred to EEOC for the purpose of dual filing" has been checked off. Although it is common practice for state human relations agencies to dual file charges with the EEOC, for purposes of summary judgment review, I find simple indication on a state form for future plans for dual filing insufficient to establish that a federal charge has actually been filed. At this late stage, almost three years after Pettus' dismissal, Knight should, at the least, be able to produce an EEOC charge number relating to her present sexual harassment complaint or some other proof that the EEOC ever received and/or processed her claim. Furthermore, internal inconsistencies within Knight's PHRC complaint undermine her

suggestion that the PHRC complaint is proof of an EEOC filing. Though she indicted in question 6 plans for dual filing, in response to question 10 "[h]ave you filed a complaint about this matter with any other commission or agency?" Knight checked off "yes" elaborating that a complaint had been filed with the EEOC in February 1996. As previously discussed, the EEOC has no record of a February 1996 filing. Thus, I conclude that Knight's PHRC complaint, alone, does not establish filing of an EEOC charge.

Moreover, prior to bringing suit in federal court, the complainant must receive a right-to-sue letter signifying the conclusion of the EEOC's action. 42 U.S.C. § 2000e-5(f)(1); Seredinski v. Clifton Precision Products Co., 776 F.2d 56, 61 (3d Cir. 1985). Although obtaining a right-to-sue letter is no longer considered a jurisdictional requirement, it is still a prerequisite to filing a Title VII action. Zipes v. Trans. World Airlines, 455 U.S. 385, 393 (1982). Where equity requires, however, this prerequisite can be waived, when the complainant can show that she is entitled to the right-to-sue letter and has requested it. See e.g., Johnsons-Medland v. Bethanna, Civ.A.No. 96-4258, 1996 WL 612467 *6 (E.D.Pa. Oct. 17, 1996)(citing cases in which a plaintiff's demonstration that she is entitled to a right-to-sue letter is adequate substitute for actual letter). In face of the lack of evidence that Knight ever filed an EEOC

charge it is not surprising that she has provided the court with neither a right-to-sue letter nor evidence of an attempt to procure such a letter. Although, I am mindful of the Third Circuit Court of Appeals' warning that "procedural technicalities should not be used to prevent Title VII claims from being decided on their merits", Gooding v. Warner Lambert, 744 F.2d 354, 359 (3d Cir. 1984), Knight's failure to submit any reliable evidence of an EEOC charge cannot be overlooked. Accordingly, I will grant the Bureau's motion for summary judgment based on Knight's failure to exhaust administrative remedies.

An Order follows.

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O R D E R

AND NOW, this 20th day of August 1998, upon consideration of a motion for summary judgment submitted by Defendant, the Pennsylvania State Police, Bureau of Liquor Control Enforcement (the "Bureau") (Dkt. #12); Plaintiff's response (Dkt. #13) and the Bureau's reply (Dkt. #14), it is hereby ORDERED that the Bureau's motion is **GRANTED**. Accordingly, judgment is entered in favor of Defendant, the Pennsylvania State Police, Bureau of Liquor Control Enforcement and against Plaintiff, Valda Knight. Additionally, as it appears that

Defendant, Mekel Pettus, has never been served, this action shall be **DISMISSED**, without prejudice², as to him.

The Clerk shall mark this case as **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.

2. See Federal Rule of Civil Procedure 4(m).